



# GENERAL ASSEMBLY

## COMMONWEALTH OF KENTUCKY

### 2005 REGULAR SESSION

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SENATE BILL NO. 133

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TUESDAY, FEBRUARY 22, 2005

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The following bill was reported to the House from the Senate and ordered to be printed.

RECEIVED AND FILED  
DATE March 18, 2005  
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TREY GRAYSON  
SECRETARY OF STATE  
COMMONWEALTH OF KENTUCKY  
BY R. Adles

AN ACT relating to guaranteed energy, water, or wastewater savings performance contracting.

***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

1 Section 1. KRS 45A.345 is amended to read as follows:

2 As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

3 (1) "Aggregate amount" means the total dollar amount during a fiscal year of items of a  
4 like nature, function, and use the need for which can reasonably be determined at  
5 the beginning of the fiscal year. Items the need for which could not reasonably be  
6 established in advance or which were unavailable because of a failure of delivery  
7 need not be included in the aggregate amount.

8 (2) "Capital cost avoidance" means moneys expended by a local public agency to pay  
9 for an energy conservation measure identified as a permanent equipment  
10 replacement and whose cost has been discounted by any additional energy and  
11 operation savings generated from other energy conservation measures identified in  
12 the guaranteed energy savings contract, except that for school districts capital cost  
13 avoidance shall also mean moneys expended by the district from one (1) or more of  
14 the following sources:

15 (a) General fund;

16 (b) Capital outlay allotment under KRS 157.420; and

17 (c) State and local funds from the Facilities Support Program of Kentucky under  
18 KRS 157.440.

19 (3) "Chief executive officer" means the mayor, county judge/executive, superintendent  
20 of schools, or the principal administrative officer of a local public agency, or the  
21 person designated by the chief executive officer or legislative body of the local  
22 public agency to perform the procurement function.

23 (4) "Construction" means the process of building, altering, repairing, or improving any  
24 public structure or building, or other public improvements of any kind to any public

- 1 real property. It does not include the routine operation, routine repair, or routine  
 2 maintenance of existing structures, buildings, or real property.
- 3 (5) "Contract" means all types of local public agency agreements, including grants and  
 4 orders, for the purchase or disposal of supplies, services, construction, or any other  
 5 item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-  
 6 plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or  
 7 task orders; leases; letter contracts; and purchase orders. It also includes  
 8 supplemental agreements with respect to any of the foregoing. It does not include  
 9 labor contracts with employees of local public agencies.
- 10 (6) "Document" means any physical embodiment of information or ideas, regardless of  
 11 form or characteristic, including electronic versions thereof.
- 12 (7) "Established catalogue price" means the price included in the most current  
 13 catalogue, price list, schedule, or other form that:
- 14 (a) Is regularly maintained by the manufacturer or vendor of an item; and
  - 15 (b) Is either published or otherwise available for inspection by customers; and
  - 16 (c) States prices at which sales are currently or were last made to a significant  
 17 number of buyers constituting the general buying public for that item.
- 18 (8) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments  
 19 are made pursuant to objective measurable criteria, set forth in the invitation for  
 20 bids, which affect the economy and effectiveness in the operation or use of the  
 21 product, such as reliability, maintainability, useful life, residual value, and time of  
 22 delivery, performance, or completion.
- 23 (9) "Invitation for bids" means all documents, whether attached or incorporated by  
 24 reference, utilized for soliciting bids in accordance with the procedures set forth in  
 25 KRS 45A.365.
- 26 (10) "The legislative body or governing board" means a council, commission, or other  
 27 legislative body of a city, consolidated local government, or urban-county; a county

1       fiscal court; board of education of a county or independent school district; board of  
2       directors of an area development district or special district; or board of any other  
3       local public agency.

4       (11) "Local public agency" means a city, county, urban-county, consolidated local  
5       government, school district, special district, or an agency formed by a combination  
6       of such agencies under KRS Chapter 79, or any department, board, commission,  
7       authority, office, or other sub-unit of a political subdivision which shall include the  
8       offices of the county clerk, county sheriff, county attorney, coroner, and jailer.

9       (12) "May" means permissive. However, the words "no person may . . ." mean that no  
10      person is required, authorized, or permitted to do the act prescribed.

11      (13) "Negotiation" means contracting by either the method set forth in KRS 45A.370,  
12      45A.375, or 45A.380.

13      (14) "Noncompetitive negotiation" means informal negotiation with one (1) or more  
14      vendor, contractor, or individual without advertisement or notice.

15      (15) "Objective measurable criteria" means sufficient information in the invitation to bid  
16      as to weight and method of evaluation so that the evaluation may be determined  
17      with reasonable mathematical certainty. Criteria which are otherwise subjective,  
18      such as taste and appearance, may be established when appropriate.

19      (16) "Person" means any business, individual, union, committee, club, or other  
20      organization or group of individuals.

21      (17) "Procurement" means the purchasing, buying, renting, leasing, or otherwise  
22      obtaining any supplies, services, or construction. It also includes all functions that  
23      pertain to the obtaining of any public procurement, including description of  
24      requirements, selection, and solicitation of sources, preparation and award of  
25      contract, and all phases of contract administration.

26      (18) "Request for proposals" means all documents, whether attached or incorporated by  
27      reference, utilized for soliciting proposals in accordance with the procedures set

- 1       forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.
- 2       (19) "Responsible bidder or offeror" means a person who has the capability in all  
3       respects to perform fully the contract requirements, and the integrity and reliability  
4       which will assure good faith performance.
- 5       (20) "Responsive bidder" means a person who has submitted a bid under KRS 45A.365  
6       which conforms in all material respects to the invitation for bids, so that all bidders  
7       may stand on equal footing with respect to the method and timeliness of submission  
8       and as to the substance of any resulting contract.
- 9       (21) "Services" means the rendering, by a contractor, of its time and effort rather than the  
10      furnishing of a specific end product other than reports which are merely incidental  
11      to the required performance of service. It does not include labor contracts with  
12      employees of local public agencies.
- 13      (22) "Shall" means imperative.
- 14      (23) "Specifications" means any description of a physical or functional characteristic of a  
15      supply, service, or construction item. It may include a description of any  
16      requirement for inspecting, testing, or preparing a supply, service, or construction  
17      item for delivery.
- 18      (24) "Supplemental agreement" means any contract modification which is accomplished  
19      by the mutual action of the parties.
- 20      (25) "Supplies" means all property, including but not limited to leases on real property,  
21      printing, and insurance, except land or a permanent interest in land.
- 22      (26) "Energy conservation measure" means a training program or facility alteration  
23      designed to reduce energy consumption or operating costs, and may include one (1)  
24      or more of the following:
- 25          (a)   Insulation of the building structure or systems within the building;
- 26          (b)   Storm windows or doors, caulking or weatherstripping, multiglazed windows  
27          or doors, heat absorbing or heat reflective glazed and coated window or door

1 systems, additional glazing, reductions in glass area, or other window and  
 2 door system modifications that reduce energy consumption;

3 (c) Automated or computerized energy control systems;

4 (d) Heating, ventilating, or air conditioning system modifications or  
 5 replacements;

6 (e) Replacement or modification of lighting fixtures to increase the energy  
 7 efficiency of the lighting system without increasing the overall illumination of  
 8 a facility, unless an increase in illumination is necessary to conform to the  
 9 applicable state or local building code for the lighting system after the  
 10 proposed modifications are made;

11 (f) Energy recovery systems;

12 (g) Cogeneration systems that produce steam or forms of energy such as heat, as  
 13 well as electricity, for use primarily within a building or complex of buildings;

14 (h) Energy, water, or wastewater conservation measures that provide long-term  
 15 operating cost reductions or billable revenue increases; ~~or~~

16 (i) Any life safety measures that provide long-term operating cost reductions;

17 (j) Water and wastewater conservation measures, including plumbing fixtures  
 18 and infrastructure;

19 (k) Equipment upgrades that improve the accuracy of billable revenue  
 20 generating systems; or

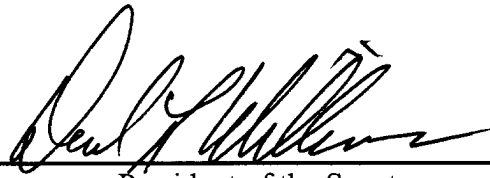
21 (l) Automated, electronic, or remotely controlled systems or measures that  
 22 reduce direct personnel costs.

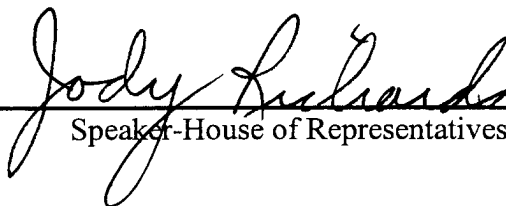
23 (27) "Guaranteed energy savings contract" means a contract for the evaluation and  
 24 recommendation of energy, water, and wastewater conservation measures and for  
 25 implementation of one (1) or more of those measures. The contract shall provide  
 26 that all payments, except obligations on termination of the contract before its  
 27 expiration, are to be made over time and the savings are guaranteed to the extent

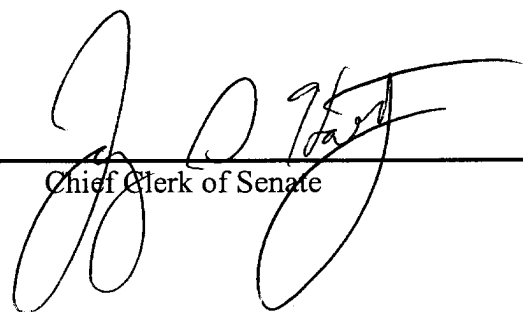
1 necessary to make payments for the cost of the design, installation, and maintenance  
2 of energy, water, and wastewater conservation measures.

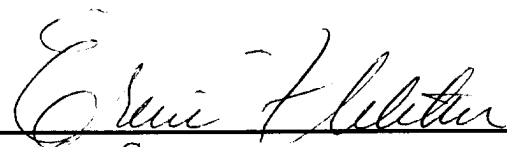
3 (28) "Qualified provider" means a person or business experienced in the design,  
4 implementation, and installation of energy, water, and wastewater conservation  
5 measures and is determined to be qualified by the local public agency. The qualified  
6 provider shall be responsible for and shall provide the local public agency with the  
7 following information regarding guaranteed energy, water, and wastewater savings  
8 contracts:

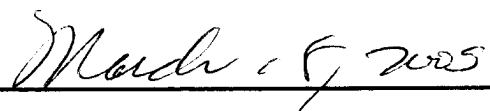
- 9 (a) Project design and specifications;
- 10 (b) Construction management;
- 11 (c) Construction;
- 12 (d) Commissioning;
- 13 (e) On-going services as required;
- 14 (f) Measurement and verification of savings for guaranteed energy, water, and  
15 wastewater savings contracts; and
- 16 (g) Annual reconciliation statements as provided in KRS 45A.352(8).

  
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President of the Senate

  
\_\_\_\_\_  
Speaker-House of Representatives

Attest:   
\_\_\_\_\_  
Chief Clerk of Senate

Approved   
\_\_\_\_\_  
Governor

Date   
\_\_\_\_\_